BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE, THE DELAWARE DEPARMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL (ENERGY DELAWARE OFFICE), THE OFFICE OF MANAGEMENT AND BUDGET, AND THE CONTROLLER GENERAL'S OFFICE

IN THE MATTER OF INTEGRATED RESOURCE PLANNING FOR THE PROVISION OF STANDARD OFFER SUPPLY SERVICE BY DELMARVA POWER & LIGHT COMPANY ….	)))))	PSC DOCKET NO. 07-20

RESPONSE OF ALAN MULLER TO APRIL 6, 2007, LETTER OF HEARING EXAMINER O'BRIEN

This is my response to Mr. O'Brien's letter of April 6, 2007, in which he asked the parties to:

"… address in their responses the reasonableness of asking the SOS ratepayers to bear additional, substantial litigation costs in order to scrutinize a "plan," which must be submitted every two years and which, by its very nature, must be flexible enough to be modified quickly as market conditions, technological capabilities, and regulatory requirements change."

ECURSA (or the "Act") defines IRP at Sec. 2:

"Integrated resource planning" means the planning process of an Electric Distribution Company that systematically evaluates all available supply options, including but not limited to: generation, transmission and Demand-Side Management programs, during the planning period to ensure that the Electric Distribution Company acquires sufficient and reliable resources over time that meet their customers' needs at a minimal cost."

There is no authority here for isolating IRP costs onto the SOS ratepayers: IRP is defined as "the planning process of an Electric Distribution Company," not "The planning process for SOS customers ..."

In Sec.3(a)(4), ECURSA states:

"Electric Distribution Companies subject to the oversight of the Commission and as part of their obligation to be Standard Offer Service Suppliers shall engage in Integrated Resource Planning for the purpose of evaluating and diversifying their electric supply options, efficiently and at the lowest cost to their customers."

Again, I find no authority here for isolating IRP costs onto the SOS customers. Rather, the Act indicates that IRP is part of the general obligation of DP&L as a utility *"subject to the oversight of the Commission…."*

ECURSA addresses IRP costs at Sec. 6(c)(4):

"The costs that DP&L incurs in developing and submitting their [sic] IRPs shall be included and recovered in DP&L's distribution rates."

Again, there is no authority for isolating these costs onto SOS customers.

Note that DP&L is authorized cost recovery for *"developing and submitting their IRPs,"* not for *"substantial litigation"* of them.

This raises two questions (1) what is the scope of the required IRP, and (2) is DP&L responding to these requirements in good faith.

(1) Legislative intentions with regard to IRP are defined in some detail in several parts of the Act:

At Sec. 6(c)(1-2):

"In its IRP, DP&L shall systematically evaluate all available supply options during a ten (10)-year planning period in order to acquire sufficient, efficient and reliable resources over time to meet its customers' needs at a minimal cost. The IRP shall set forth DP&L's supply and demand forecast for the next ten (10)-year period, and shall set forth the resource mix with which DP&L proposes to meet its supply obligations for that ten-year period (i.e., Demand-Side Management Programs, long-term purchased power contracts, short-term purchased power contracts, self generation, procurement through wholesale market by RFP, spot market purchases, etc.)."

and:

"As part of its IRP process, DP&L shall not rely exclusively on any particular resource or purchase procurement process. In its IRP, DP&L shall explore in detail all reasonable short- and long-term procurement or Demand-Side Management strategies, even if a particular strategy is ultimately not recommended by the Company."

And:

"The IRP must investigate all potential opportunities for a more diverse supply at the lowest reasonable cost".

The 34 page initial IRP filing by DP&L failed to comply in good faith with these requirements, as pointed out in the Staff's December 13, 2006 letter of concern and in subsequent correspondence. Mr. Geddes wrote: "It is Staff's belief that additional information was generated by Delmarva or its consultant, ICF, or others, which was not included in the IRP materials submitted to the Commission." Subsequent additional information provided by DP&L has not cured the deficiencies.

The DP&L filings appear to be directed at endorsing the existing business plan for the company, not seriously exploring alternatives are required by the Act.

All considered, the requirements for IRP have been laid out in the Act and, broadly, are not within the Commission's discretion. The Commission (and the three other state agencies) are required to structure a proceeding in which the IRP requirements can be carried out.

The need for a contested case has been created by DP&L, not by any of the other parties.

As noted in my previous comments, ECURSA states:

> *The Commission shall have the authority to promulgate any rules and regulations it deems necessary to accomplish the development of IRPs by DP&L.*

The PSC needs to do this NOW. It needs to reconcile past practice in IRP dockets and the varying sources of guidance and procedural options and clarify its role with respect to the other agencies in a rulemaking process, sometimes called a "Regulation Docket" by the PSC.

The various components of resource planning have been separated out, and must instead be integrated. IRP (Docket 07-20), RFP/supply side (Docket 06-241) DSM docket (Blueprint for the Future), and decoupling docket must be combined, and when ready to proceed, should go forward only after rulemaking has been completed.

How should this Integrated Resource Plan docket be handled?

In an interview with the Regulatory Assistance Project (RAP), addressing the state's Integrated Resource Planning process, Robert Howatt of the Staff commented:

> New legislation will also require EDCs to provide Integrated Resource Plans every two years for PSC approval. The legislation arose in response to high electricity prices. The rate freeze that was instated as part of deregulation had been set to expire on May 1, 2006, at which time the majority of Delaware customers would have faced rate hikes of 50-60%. The new legislation is the legislature's response to the situation. The IRP process will be an integrated process that governs how the IOU will meet their standard offer service obligations and meet their load requirements. Rules may be forthcoming by spring of 2007.
> (http://www.raponline.org/Pubs/IRPsurvey/DelawareTDsurvey.pdf)

As to Integrated Resource Planning specifically:

(c)(1) DP&L is required to conduct Integrated Resource Planning. On December 1, 2006, and on the anniversary date of the first filing date of every other year thereafter (i.e., 2008, 2010 et seq.), DP&L shall file with the Commission, the Controller General, the Director of the Office of Management and Budget and the Energy Office an Integrated Resource Plan ("IRP"). In its IRP, DP&L shall systematically evaluate all available supply options during a ten (10)-year planning period in order to acquire sufficient, efficient and reliable resources over time to meet its customers' needs at a

minimal cost. The IRP shall set forth DP&L's supply and demand forecast for the next ten (10)-year period, and shall set forth the resource mix with which DP&L proposes to meet its supply obligations for that ten-year period (i.e., Demand-Side Management Programs, long-term purchased power contracts, short-term purchased power contracts, self generation, procurement through wholesale market by RFP, spot market purchases, etc.).

1. As part of its IRP process, DP&L shall not rely exclusively on any particular resource or purchase procurement process. In its IRP, DP&L shall explore in detail all reasonable short- and long-term procurement or Demand-Side Management strategies, even if a particular strategy is ultimately not recommended by the Company. At least 30 percent of the resource mix of DP&L shall be purchases made through the regional wholesale market via a bid procurement or auction process held by DP&L. Such process shall be overseen by the Commission subject to the procurement process approved in PSC Docket #04-391 as may be modified by future Commission action.

2. In developing the IRP, DP&L may consider the economic and environmental value of:

(i) resources that utilize new or innovative baseload technologies (such as coal gasification);

(ii) resources that provide short- or long-term environmental benefits to the citizens of this State (such as renewable resources like wind and solar power);

(iii) facilities that have existing fuel and transmission infrastructure;

(iv) facilities that utilize existing brownfield or industrial sites;

(v) resources that promote fuel diversity;

(vi) resources or facilities that support or improve reliability; or

(vii) resources that encourage price stability.

The IRP must investigate all potential opportunities for a more diverse supply at the lowest reasonable cost.

3. The Commission shall have the authority to promulgate any rules and regulations it deems necessary to accomplish the development of IRPs by DP&L. Commencing in 2009, DP&L shall submit a report to the Commission, the Governor and the General Assembly detailing their progress in implementing their IRPs.

26 Del.C. § 1007(c)(1). HB6 mandated an intensive look at need and resource type and timing, with a preference for renewables, and authorized rulemaking to develop the framework for IRP inquiry, and also authorized permissive authority for DSM rulemaking. 26 Del.C. §1008(b)(1)(c).

There is no authorization within the statute to deviate from standard administrative procedure.

DP&L's objections to Mr. Firestone's quite proper discovery requests, have created an unnecessary controversy which should not be prolonged:

PSC Rules on discovery are clear: Rule 18, Discovery, PSC Rule of Practice and Procedure (1999).

RULE 18. Discovery Procedures

(a) Discovery may be conducted through written interrogatories, written data requests, requests for admissions, and or depositions. Discovery may be available to any party in proceedings before the Commission or to the Staff and Public Advocate in the investigation of any filing. No discovery is to be filed with the Commission or Hearing Examiner unless it is requested or submitted as part of a discovery dispute.
(b) Parties should begin any discovery as soon as possible after the commencement of the proceeding and discovery should be completed prior to the hearings. Leave to conduct discovery after the commencement of hearings may be granted for good cause shown.
(c) All interrogatories or written data requests shall be numbered in sequence by the party requesting the information.
(d) The Commission, designated Presiding Officer or Hearing Examiner may vary discovery provisions, in the interest of justice, and may direct the parties to employ electronic medium for the service of discovery.
(e) The parties are encouraged to pursue discovery through informal written or oral data requests or conferences.
(f) In rate or other expedited cases, responses to discovery must be served no later than fifteen (15) days, excluding holidays and weekends, after service of the discovery, unless otherwise directed by the Commission, the designated Presiding Officer or Hearing Examiner. In all other cases the information requested shall be provided within thirty (30) days of service, unless otherwise directed by the Commission, Presiding Officer, or designated Hearing Examiner.
(g) If a party objects to any discovery, then that party must notify the party seeking the information within ten (10) days after service of the discovery of the objection and its grounds. Should the parties be unable to resolve any discovery dispute, then the party seeking the information shall file a motion to compel and attach the other party's objection. The Presiding Officer or Hearing Examiner may schedule oral argument on the motion.

Concluding, I request that:

(1) The PSC formally acknowledge that this is a contested case;
(2) Per my previous comments, schedule discovery and evidentiary hearings in consultation with all parties. (Given the obstructive attitude of DP&L, we must anticipate that prolonged dental proceedings and more than one cycle of discovery/hearing will be required to extract the necessary information);
(3) Put DP&L on notice that cost recovery from ratepayers will NOT be allowed for IRP proceedings beyond what is allowed by the Act, and that any cost recovery will be distributed across all customers paying distribution charges;
(4) Open a Regulation Docket in which to establish IRP Guidelines to include intervener funding at the expense of DP&L.

April 13, 2007

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